

5510 P05

IN THE MAGISTRATE COURT OF GWINNETT COUNTY, STATE OF GEORGIA

KEN JOSEPH
596 MIDDLETON PI
GRAYSON GA 30017
 Plaintiff(s)

Civil Action
No15M35100

Daytime Telephone No

vs

BARCLAYS BANK DELAWARE
100 S WEST STREET
WILMINGTON, DE 19801
 Defendant(s)

INFO & FORMS ON INTERNET
www.gwinnettcourts.com
 E-mail mag@gwinnettcourtcounty.com

SUMMONS

Telephone (preferably daytime # if known)

NOTICE AND SUMMONS

(This form to be used when the Plaintiff drafts a separate Complaint rather than using MAG 10-01 Statement of Claim form)

To All Defendant(s)

You are hereby notified that the above named Plaintiff has made a claim and is requesting judgment against you in the sum shown in the attached petition and/or statement of claim

YOU ARE REQUIRED TO FILE or PRESENT AN ANSWER TO THIS CLAIM WITHIN 30 DAYS AFTER SERVICE OF THIS CLAIM UPON YOU IF YOU DO NOT ANSWER, JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU YOUR ANSWER MAY BE FILED IN WRITING OR MAY BE GIVEN ORALLY TO THE JUDGE

If you choose to file your answer orally it MUST BE IN OPEN COURT IN PERSON and within the 30 day period NO TELEPHONE ANSWERS ARE PERMITTED

If you file an answer the court will hold a hearing on this claim at the Gwinnett Justice & Administration Center 75 Langley Dr Lawrenceville GA 30046-6900 at a time to be scheduled after your answer is filed (Answer & Counterclaim forms are available on the above website and at the Magistrate Clerk's office Answers & counterclaims should be mailed to Clerk Magistrate Court P O Box 246 Lawrenceville GA 30046-0246)

You may come to court with or without an attorney If you have witnesses books receipts, or other writings bearing on this claim you should bring them to court at the time of your hearing If you want witnesses or documents subpoenaed see a staff person in the Clerk's office for assistance

If you have a claim against the Plaintiff you should notify the court and immediately file a written answer and counterclaim

If you admit to the Plaintiff's claim but need additional time to pay you must come to the hearing in person and tell the court your circumstances

Filed 4 day DECEMBER 20 15[Signature]
Magistrate or Deputy Clerk of Court

MORE INSTRUCTIONS ARE ON THE REVERSE SIDE OF THIS DOCUMENT

MAG 10 17 Summons (Rev 8 10) wpd

ALL-STATE LEGAL®

EXHIBIT

A

IN THE MAGISTRATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

KEN JOSEPH
Plaintiff

v
BARCLAYS BANK DELAWARE
Defendant

)
)
) CASE# 15m35106
)
)
)

COMPLAINT FOR RELIEF

Plaintiff, KEN JOSEPH individually, hereby sues Defendant(s), BARCLAYS BANK DELAWARE for violations of the Telephone Consumer Protection Act (TCPA) 227 , 47 USC § 227 *Sec seq*, and the Fair Debt Collection Practices Act (FDCPA), 15 U S C § 1692 *Sec seq*

FILED IN OFFICE
CLERK MAGISTRATE COURT
GWINNETT COUNTY, GA
2015 DEC -4 PM 4:54
RICHARD ALEXANDER CLERK

JURISDICTION and VENUE

- 1 This court has jurisdiction under 47 U S C §227(b)(3), the Fair Debt Collection Practices Act, 15 U S C §1692
- 2 Venue is proper pursuant to 28 U S C §1391b Venue in this District is proper in Gwinnett County Georgia in that the JOSEPH resides here, the Defendant transact business here, and the conduct complained of occurred here
- 3 This is an action for damages which equal or less than \$15,000 00

PARTIES

- 4 The Plaintiff in this lawsuit is KEN JOSEPH (herein after 'JOSEPH') a natural person and a consumer as defined by 15 U S C § 1692a(3) who resides in Gwinnett County Georgia
- 5 JOSEPH is a subscribe for cellular services for telephone number 470-331-4557
- 6 BARCLAYS BANK DELAWARE (herein after 'BARCLAYS'), is a debt collection agency as defined by 15 U S C § 1692a(6) with a principle place of business in Delaware who's address is Barclays Bank Delaware, 100 S West Street, Wilmington DE, 19801
- 7 BARCLAYS may be served by personal service upon its registered agent in the State of Georgia CT Corporation, 1201 Peachtree Street NE Atlanta, Georgia 30361
- 8 Alternatively, BARCLAYS may be served by personal or substitute service pursuant to the Federal Rules of Civil Procedure and, as applicable, the laws of the States of Georgia or Delaware
- 9 BARCLAYS was formerly known as Juniper Bank
- 10 BARCLAYS, either by itself or through related companies, issues credit card loans to consumers in Georgia and also throughout the entire country

- 11 BARCLAYS maintains an official website for its company at
[https://www barclaycardus com](https://www.barclaycardus.com)
- 12 BARCLAYS official website solicits customers to apply for one of their
credit card accounts
- 13 When BARCLAYS credit card accounts go unpaid, BARCLAYS makes
telephone calls in an attempt to collect on the accounts
- 14 In the course of its business, BARCLAYS made telephone calls to
JOSEPH's cellular telephone number in this County
- 15 BARCLAYS uses instrumentality of interstate commerce of the mails in
a business the principle purpose of which is the collection of any debts,
and/or regularly collects or attempts to collect, directly or indirectly,
debts owed or due, or asserted to be owed or due another

FACTUAL ALLEGATIONS

- 16 JOSEPH received numerous telephone calls to his cellular number 470-
331-4557 in an attempt to collect a debt allegedly owed by a person
whom last name "Lewis" or "Louis" not personally known by him
- 17 The alleged debtor at no time had access to JOSEPH's cell phone
- 18 On or about September 23rd, 2015, JOSEPH begin receiving
communication calls to his wireless phone number 470-331-4557 about
an alleged outstanding debt from BARCLAYS which originated from

866-456-0677 and 866-408-4070 Said numbers are numbers known to be used by BARCLAYS in their debt collection operations

19 Each separate calls were distinct and therefore different transaction or violations

20 At no time has the JOSEPH given his express consent, written or otherwise, to BARCLAYS to call his number

21 The alleged debt arose from services provided by BARCLAYS which were primarily for family, personal or household purposes and which meets the definition of a 'debt' under 15 U S C § 1692a(5)

22 The BARCLAYS attempted to collect on the Debt and as such, engaged in "communications" as defined in 15 U S C § 1692a(2)

23 BARCLAYS phone systems has the capacity to predictively dial

24 BARCLAYS Phone systems and software have the capacity to store a database of telephone numbers and to dial those numbers at random or in sequential order

25 BARCLAYS programs telephone into its collection system which then dials those numbers at a rate to ensure that a customer representative will be available when a consumer answer the telephone

26 BARCLAYS dialing systems have the capacity to dial from a list of numbers without human intervention

- 27 All of BARCLAYS' telephone calls to JOSEPH were placed using an automatic telephone dialing system or other equipment capable of storing and producing telephone numbers at random or sequential periods to be dialed ('auto dialer')
- 28 BARCLAYS made several attempts to collect a debt by dialing JOSEPH's Cell phone using an automatic telephone dialing system (ATDS)
- 29 JOSEPH informed BARCLAYS his cell phone is not to be called on several occasions during the calls
- 30 BARCLAYS, with total disregard continues to call JOSEPH's cell phone at least 40 times (see exhibit A) beginning September 23rd 2015 to October 20, 2015
- 31 JOSEPH intend to recover additional violations during the discovery period
- 32 JOSEPH receive the following calls without prior express nor for emergency purposes

470-331-4557	10/5/2015	10 20 AM	11 52 AM	7 35 PM
470-331-4557	10/6/2015	6 22 PM	8 02 PM	
470-331-4557	10/7/2015	6 22 00PM	8 02 00PM	
470-331-4557	10/8/2015	11 14 AM		
470-331-4557	10/8/2015	7 09 PM	8 18 PM	

- 33 The total cost of these violation does not exceed \$15000
- 34 The communications in question here are all related to the collection of a
alleged consumer debt due from a debtor whom JOSEPH did not know
- 35 The acts alleged herein all took place in Gwinnett County, in that the
offending calls were received there
- 36 JOSEPH who is a non-debtor has no prior or present established
relationship with BARCLAYS and therefore had no reason to have
placed these calls to his phone
- 37 The telephone calls were intentionally, willfully and knowingly initiated
in order to obtain payment on an alleged debt owe to Barclay

BARCLAYS ENGAGES IN HARASSMENT AND ABUSE

- 38 JOSEPH has no contractual obligation to pay BARCLAYS
- 39 BARCLAYS continues to attempt to enforce and collect a non-existent
debt
- 40 The FDCPA is a strict liability statute, which provides for actual or
statutory damages upon the showing of one violation. The Eleventh
Circuit has held that whether a debt collector's conduct violates the
FDCPA should be judged from the standpoint of the least sophisticated
consumer. *LeBlanc v Unifund CCR Partners*, 601 F.3d 1185 (11th Cir
2010)

41 To prohibit harassment and abuses by debt collectors the FDCPA, at 15 U S C § U S C § 1692d, provides that a debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt and names a non-exhaustive list of certain *per se* violations of harassing and abusive collection conduct 15 U S C § 1692d(1)-(6)

42 Under the "least sophisticated consumer" standard, JOSEPH reasonably believed that BARCLAYS was making a claim against him for personal liability on a debt that he did not owe

43 The emotional distress has strained JOSEPH's relationships with family and friends

44 On October 29th, 2015 JOSEPH sent a Notice of Intent to Litigate via Certified mail to BARCLAYS. A request was made of BARCLAYS to contact JOSEPH to mitigate and discuss an amicable settlement of the damages articulated in the notice

45 On November 8th 2015 JOSEPH received a reply from BARCLAYS Attorney requesting additional information

46 On November 15, 2015, JOSEPH made another attempt to mitigate BARCLAYS damages by sending a copy of the Lawsuit prior to filing

47 The back and forth discussion surrounded the topic of whether or not JOSEPH had ownership to the cell phone at the time the calls were placed

48 15 U S C § 1692c- Prohibited Communication Practices

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt-
(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer, In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 O'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location

COUNT I
VIOLATIONS OF THE TELEPHONE
COMMUNICATIONS ACT (TCPA) 47 U S C §227(b)(1)(A)(iii)

34 JOSEPH alleges and incorporates the information in paragraphs 1 through 48

35 BARCLAYS actions alleged *supra* constitute numerous negligent violations of the TCPA, entitling JOSEPH to an award of \$500 00 in

statutory damages for each and every violation pursuant to 47 U S C

§227(b)(3)(b) by using an automatic telephone dialing system to call the

JOSEPH s number, which is assigned to a cellular telephone service

36 BARCLAYS has committed nineteen (10) distinct separate documented violations of 47 U S C §227(b)(1)(A) and JOSEPH is entitled to damages for violations pursuant to 47 U S C §227(b)(3)(A)(B)(C)

37 BARCLAYS actions alleged *supra* constitute numerous and multiple knowing and/or willful violation of the TCPA, entitling JOSEPHs to an award of \$1500 00 in statutory damages for each and every violation after the first pursuant to 47 U S C §227(b)(3)(B) and 47 U S C §227(b)(3)(C)

38 BARCLAYS, used an automatic telephone dialing system which violate the statute

a 47 USC 227(b)(A), to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice

1 (iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service or other radio common carrier service, or any service for which the called party is charged for the call,

b 47 USC 227(b)(B), to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B)

39 Defendant, BARCLAYS knew or should have known that he was in violation of the TCPA when placing the phone calls because JOSEPH had instructed BARCLAYS to refrain from calling his cell phone

40 Defendant, BARCLAYS knew or should have known that he was in violation of the TCPA when placing the phone calls because JOSEPH is not a debtor

WHEREFORE, JOSEPH demands judgment for damages against BARCLAYS for \$500.00 for the first call and \$1,500 per each additional call actual or statutory damages, and punitive damages, attorney's fees and costs

COUNT II
VIOLATION OF THE FAIR DEBT COLLECTION
PRACTICES ACT (FDCPA) 15 USC § 1692

41 JOSEPH alleges and incorporates the information in paragraphs 1 through

42 BARCLAYS conduct violated 15 U S C §1692d in that BARCLAYS engaged in behavior the natural consequence of which was to harass, oppress, or abuse the JOSEPH in connection with the collection of a debt

43 BARCLAYS violate 15 USC §1692d(5) by refusing to grant JOSEPH's demand to ceased calls to his cell phone and causing his phone to ring repeatedly in attempt to engage JOSEPH in telephone conversation, with the intent to annoy and harass


44 In direct result of BARCLAYS's action described in each allegation above, JOSEPH and members of his family has suffered harassment disruption of work flow and emotional distress and pursuant to 15 USC §1692k

WHEREFORE, Plaintiff prays for punitive damages, statutory damages pursuant to 15 USC §1692k, and any attorney's fees and cost against BARCLAYS pursuant to 15 USC §1692 et seq

DEMAND FOR JURY TRIAL

JOSEPH hereby demands a trial by jury of all issues so triable as a matter of law

Dated

12-4-15


Respectfully submitted,



Ken Joseph
596 Middleton Place
Grayson, GA 30017
Phone 470-331-4557
Email sem252525@aol.com

Service to
BARCLAYS BANK DELAWARE
c/o
CT CORPORTATION
1201 PEACHTREE STREET N E
ATLANTA, GA 30361

BARCLAYS BANK DELAWARE
Delaware, 100 S West Street,
Wilmington DE, 19801

BARCLAYS BANK DELAWARE
c/o
Wyrick Robbins Yates & Pronton, LLP
Michael D DeFrank
mdefrank@wyrick.com
4101 Lake Boone Trail Suite 300
Raleigh NC 27607

CERTIFICATE OF SERVICE

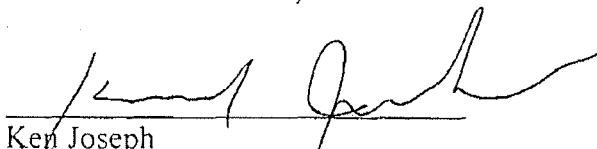
This is to certify that a true and correct copy of the document above was sent by first class mail USPS to counsel of record listed below for Defendant

BARCLAYS BANK DELAWARE
c/o
CT CORPORTATION
1201 PEACHTREE STREET N E
ATLANTA, GA 30361

BARCLAYS BANK DELAWARE
Delaware, 100 S West Street,
Wilmington DE, 19801

BARCLAYS BANK DELAWARE
c/o
Wyrick Robbins Yates & Pronton LLP
Michael D DeFrank
mdefrank@wyrick.com

Dated December 4th, 2015



Ken Joseph
596 Middleton Place
Grayson, GA 30017
Phone 470-331-4557
Email sem252525@aol.com

Call company name			Date	Time	Time2	Time3	Time4	Time5	Notes
1	Barclays	470 331 4557	10/3/2015	6 30 PM			1500		
2	Barclays	470 331 4557	10/3/2015	11 18 AM			1500		
3	Barclays	470 331 4557	10/5/2015	12 43 PM	6 29 PM		3000		
4	Barclays	470 331 4557	10/5/2015	10 20 AM	11 52 AM	7 35 PM	4500		
5	Barclays	470 331 4557	10/6/2015	6 22 PM	8 02 PM		3000		
6	Barclays	470 331-4557	10/7/2015	6 22 00PM	8 02 00PM		3000		
7	Barclays	470 331-4557	10/8/2015	11 14 AM			1500		
8	Barclays	470 331-4557	10/8/2015	7 09 PM	8 18 PM		3000		
9	Barclays	470 331-4557	10/9/2015	10 42 AM	6 31 PM	6 37 PM	4500		
10	Barclays	470 331 4557	10/10/2015	12 15 PM			1500		
11	Barclays	470 331 4557	10/12/2015	6 54 PM	7 57 PM		3000		
12	Barclays	470 331 4557	10/12/2015	12 45 PM			1500		
13	Barclays	470 331-4557	10/12/2015	10 45 AM			1500		
14	Barclays	470 331 4557	10/13/2015	10 24 AM	11 51 AM	6 21 PM	4500		
15	Barclays	470 331 4557	10/16/20015	10 09 AM			1500		
16	Barclays	470 331 4557	10/16/2015	11 45 AM	7 21 PM		3000		
17	Barclays	470 331 4557	10/19/2015	10 15 AM			1500		
18	Barclays	470 331 4557	10/19/2015	7 39 PM	12 14 PM		3000		
19	Barclays	470 331 4557	10/21/2015	10 05 AM	11 30 AM		3000		
Additional violation originated from a different number (866) 408-4070									
21	Barclays	470 331 4557	09/23/2015	10 02 AM			1500		
22	Barclays	470 331 4557	09/24/2015	12 55 PM			1500		
23	Barclays	470 331 4557	09/25/2015	12 03 PM			1501		
24	Barclays	470 331 4557	09/28/2015	11 59 AM			1500		
25	Barclays	470 331-4557	09/29/2015	8 06 AM			1500		
26	Barclays	470 331-4557	09/30/2015	5 15 PM			1500		
								58501	

EXHIBIT "A"